**PATENT APPLICATION**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

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|---|---|
| In re application of | Docket No: Q86056 |
| Nobuyuki TANAKA, et al. | |
| Appln. No.: 10/526,660 | Group Art Unit: 1621 |
| Confirmation No.: 3169 | Examiner: Jennifer Y. Cho |
| Filed: March 4, 2005 | |

For: INTERMEDIATES IN PRODUCING PHENOXYACETIC ACID DERIVATIVES AND METHOD OF USING THE SAME

**REQUEST FOR RECONSIDERATION OF THE PATENT TERM ADJUSTMENT PURSUANT TO 37 C.F.R § 1.705(D)**

**MAIL STOP PATENT EXT.**
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicant requests restoration of 112 days of PTA erroneously charged against Applicant under 37 C.F.R. § 1.704(c)(10).

The patent indicates a revised PTA relative to the PTA indicated on the notice of allowance. Also, this is filed within two months of the Patent Issue Date and is therefore timely under 37 C.F.R. §1.705(d). The Director is authorized to charge the required fee of $200.00 as specified in §1.18(e) to Deposit Account No. 19-4880 via EFS payment screen.

**Facts**

1. Attached is a printout of the Office's determination of PTA for this application, as provided on PAIR. The net PTA is 391 days, with 112 Applicant delay days subtracted from 503 USPTO delay days. A printout of the Image File Wrapper is also attached.

2. (§ 1.705)(b)(2)(i)). For the reasons outlined in the discussion section, Applicant's delay is 0 days. The examination delay under 37 C.F.R. § 1.703(a)(1) is 503 days. The Total Patent Term Adjustment is 503 days.

3. (§ 1.705)(b)(2)(ii)). The filing date of this Application was March 4, 2005. 14 months after the filing date was May 4, 2006. The first §1.703(a)(1) date (an Action under 35 U.S.C. § 132, or a notice of allowance under 35 U.S.C. § 151) was the notice of allowance on September 19, 2007. Therefore, under 37 C.F.R. § 1.703(a)(1), the examination delay is 503 days.

4. (§ 1.705)(b)(2)(iii)). This application is not subject to a terminal disclaimer.

5. (§ 1.705)(b)(2)(iv)(B)). There were no circumstances constituting a failure to engage in reasonable efforts to conclude processing or examination of such application as set forth in 37 C.F.R. § 1.704. The PAIR entry for an Information Disclosure Statement filed on October 24, 2007 was erroneous; there was no Information Disclosure Statement filed on or around this date.

**Discussion**

Peter Bradford, Esq. of the Sughrue firm discussed the Patent Term Adjustment calculation for this case with the USPTO Office of Patent Legal Administration on February 14 and 20, 2008. Although PAIR lists "Miscellaneous Communication to Applicant - No Action

Count" on September 21, 2007 as the start date of the Applicant delay and "Information Disclosure Statement (IDS) Filed" on October 24, 2007 as the end date of the Applicant delay, this period is not equal to the asserted 112 applicant delay days. The Office informed Mr. Bradford that PAIR is incorrect, and that internal USPTO records indicate that the start date should be "Information Disclosure Statement (IDS) Filed" on October 24, 2007 and the end date should be "Patent Issue Date Used in PTA Calculation" on February 12, 2008.

The firm's records do not show that an IDS was filed in this case on October 24, 2007. The Image File Wrapper on PAIR for this case, which is attached, also fails to show any IDS on October 24, 2007 or at any time after the Notice of Allowance. The Office indicated that there was no internal record of such an IDS at the USPTO, except for the indication on the PTA calculation.

Applicant asserts on information and belief that no IDS was filed in this case after the Notice of Allowance, and thus no there is no Applicant delay under 37 C.F.R. § 1.704(C)(10). Furthermore, the Issue Fee was received on December 12, 2007, within the statutory period for responding to the September 19, 2007 Notice of Allowance, and thus there is no Applicant delay under 37 C.F.R. § 1.704(C)(3), or under any other subsection of 37 C.F.R. § 1.704.

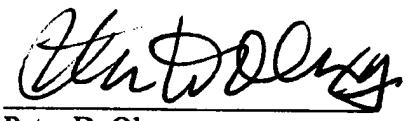
Accordingly, the Applicant delay in the present case should be calculated as 0 (zero) days and the USPTO delay of 503 days should be the Total Patent Term Adjustment.

**Conclusion**

Applicant respectfully requests correction of the Office's records and adjustment of the Office's calculation of Applicant delay from 112 days to 0 (zero) days, and correction of the Total Patent Term adjustment from 391 days to 503 days.

Favorable consideration is requested, respectfully.

Respectfully submitted,



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**10/526,660** **INTERMEDIATES IN PRODUCING PHENOXYACETIC ACID DERIVATIVES AND METHOD OF USING THE SAME**

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## Patent Term Adjustment

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|---|---|---|---|
| Filing or 371(c) Date: | 03-04-2005 | USPTO Delay (PTO) Delay (days): | 503 |
| Issue Date of Patent: | 02-12-2008 | Three Years: | - |
| Pre-Issue Petitions (days): | +0 | Applicant Delay (APPL) Delay (days): | 112 |
| Post-Issue Petitions (days): | +0 | Total Patent Term Adjustment (days): | 391 |
| USPTO Adjustment (days): | +0 | Explanation Of Calculations | |

## Patent Term Adjustment History

| Date | Contents Description | PTO(Days) | APPL(Days) |
|---|---|---|---|
| 02-12-2008 | Patent Issue Date Used in PTA Calculation | | |
| 10-24-2007 | Reference capture on IDS | | |
| 10-24-2007 | Information Disclosure Statement (IDS) Filed | | 112 |
| 01-10-2008 | Dispatch to FDC | | ↑ |
| 01-08-2008 | Application Is Considered Ready for Issue | | ↑ |
| 12-17-2007 | Issue Fee Payment Verified | | ↑ |
| 12-17-2007 | Issue Fee Payment Received | | ↑ |
| 09-25-2007 | Mail Miscellaneous Communication to Applicant | | ↑ |
| 09-25-2007 | Mail Examiner's Amendment | | ↑ |
| 09-21-2007 | Examiner's Amendment Communication | | ↑ |
| 09-21-2007 | Miscellaneous Communication to Applicant - No Action Count | | ↑ |
| 09-19-2007 | Mail Notice of Allowance | 503 | |

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|---|---|---|
| 09-19-2007 | Mail Examiner's Amendment | ↑ |
| 09-14-2007 | Document Verification | ↑ |
| 09-14-2007 | Notice of Allowance Data Verification Completed | ↑ |
| 09-14-2007 | Case Docketed to Examiner in GAU | ↑ |
| 09-04-2007 | Examiner's Amendment Communication | ↑ |
| 03-04-2005 | Information Disclosure Statement considered | ↑ |
| 07-21-2007 | Case Docketed to Examiner in GAU | ↑ |
| 07-11-2007 | Case Docketed to Examiner in GAU | ↑ |
| 07-03-2007 | Transfer Inquiry to GAU | ↑ |
| 05-15-2007 | Case Docketed to Examiner in GAU | ↑ |
| 04-02-2007 | Case Docketed to Examiner in GAU | ↑ |
| 03-31-2007 | Case Docketed to Examiner in GAU | ↑ |
| 09-02-2006 | Case Docketed to Examiner in GAU | ↑ |
| 07-06-2006 | Correspondence Address Change | ↑ |
| 06-16-2006 | IFW TSS Processing by Tech Center Complete | ↑ |
| 03-04-2005 | Preliminary Amendment | ↑ |
| 03-04-2005 | Reference capture on IDS | ↑ |
| 03-04-2005 | Information Disclosure Statement (IDS) Filed | ↑ |
| 03-04-2005 | Information Disclosure Statement (IDS) Filed | ↑ |
| 03-12-2006 | Cleared by OIPE CSR | ↑ |
| 03-12-2006 | Cleared by OIPE CSR | ↑ |
| 03-12-2006 | Cleared by OIPE CSR | ↑ |
| 03-04-2005 | 371 Completion Date | ↑ |
| 09-06-2005 | Application Dispatched from OIPE | ↑ |
| 09-06-2005 | Notice of DO/EO Acceptance Mailed | ↑ |
| 03-04-2005 | Initial Exam Team nn | ↑ |

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## Available Documents

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|---|---|---|---|---|---|
| 01-23-2008 | Issue Notification | 1 | ☐ | | |
| 01-23-2008 | Issue Notification | 1 | ☐ | | |
| 12-17-2007 | Issue Fee Payment (PTO-85B) | 1 | ☐ | | |
| 09-25-2007 | Notice of Allowance and Fees Due (PTOL-85) | 7 | ☐ | | |
| 09-19-2007 | Notice of Allowance and Fees Due (PTOL-85) | 3 | ☐ | | |
| 09-19-2007 | Notice of Allowance and Fees Due (PTOL-85) | 4 | ☐ | | |
| 09-19-2007 | List of References cited by applicant and considered by examiner | 1 | ☐ | | |
| 09-19-2007 | List of references cited by examiner | 1 | ☐ | | |
| 09-19-2007 | Foreign Reference | 43 | ☐ | | |
| 09-19-2007 | Issue Information including classification, examiner, name, claim, renumbering, etc. | 1 | ☐ | | |
| 09-19-2007 | Index of Claims | 1 | ☐ | | |
| 09-19-2007 | Bibliographic Data Sheet | 1 | ☐ | | |
| 09-19-2007 | Search information including classification, databases and other search related notes | 1 | ☐ | | |

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| 08-29-2007 | Examiner's search strategy and results | 3 | |
| 08-28-2007 | Examiner's search strategy and results | 16 | |
| 08-10-2007 | Examiner's search strategy and results | 9 | |
| 07-07-2006 | Notice of Change of Address placed in File Wrapper due to EBC Customer Number update | 1 | |
| 05-26-2006 | Request for Corrected Filing Receipt | 5 | |
| 05-26-2006 | Status Letter Mailed to Applicant | 2 | |
| 12-16-2005 | Request for Corrected Filing Receipt | 7 | |
| 09-06-2005 | Notice of DO/EO Acceptance Mailed | 2 | |
| 03-14-2005 | Fee Worksheet (PTO-06) | 1 | |
| 03-04-2005 | Transmittal of New Application | 2 | |
| 03-04-2005 | Specification | 19 | |
| 03-04-2005 | Claims | 5 | |
| 03-04-2005 | Abstract | 1 | |
| 03-04-2005 | Oath or Declaration filed | 4 | |
| 03-04-2005 | Bibliographic Data Sheet | 1 | |
| 03-04-2005 | Claims Worksheet (PTO-2022) | 1 | |
| 03-04-2005 | Fee Worksheet (PTO-06) | 1 | |
| 03-04-2005 | Fee Worksheet (PTO-06) | 1 | |
| 03-04-2005 | Preliminary Amendment | 1 | |
| 03-04-2005 | Claims | 5 | |
| 03-04-2005 | Applicant Arguments/Remarks Made in an Amendment | 1 | |
| 03-04-2005 | Information Disclosure Statement (IDS) Filed | 3 | |
| 03-04-2005 | Foreign Reference | 72 | |
| 03-04-2005 | Miscellaneous Internal Document | 1 | |
| 03-04-2005 | Documents submitted with 371 Applications | 5 | |
| 03-04-2005 | Documents submitted with 371 Applications | 23 | |
| 03-04-2005 | Documents submitted with 371 Applications | 3 | |
| 03-04-2005 | Documents submitted with 371 Applications | 3 | |

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